

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5906 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 Yes 2 to 5 No

PATAN MUNICIPALITY

Versus

AGRICULTURE PRODUCE MARKET COMMITTEE

Appearance:

MR MUKESH R SHAH for Petitioner
MR KS JHAVERI for Respondent No. 1
SERVED for Respondent No. 2
MR. S.R. DIVETIA, A.G.P. for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/10/97

ORAL JUDGEMENT

Rule. The learned counsel who appear for the respondents waive service of rule and request for immediate disposal of the matter.

The grievance of the petitioner is that the petitioner's appeal was dismissed for default under the

impugned order at Annexure-`B' to the petition even though the petitioner's advocate had appeared before the appellate authority and made an application for an adjournment. According to the petitioners a subsequent application for restoring the matter which was given with no objection of the respondent Committee's counsel was also rejected.

It does appear that on the date of hearing after the time fixed for hearing an application came to be made on behalf of the petitioners by its counsel but that application was rejected on the ground that it was given beyond the time fixed for hearing though admittedly on the same day. From the impugned order it appears that the application for adjournment was given before making of the order of dismissal for default. This fact is borne out from the order because there is reference to an adjournment application in the order itself. It was therefore incumbent upon the Director to decide as to whether there was a valid reason for seeking adjournment and the appellate authority ought not to have proceeded straightway to dismiss the matter for default. The appellate authority ought to have restored the appeal to file particularly when there was no objection on the part of the respondent. Under these circumstances, the impugned order cannot be sustained and is hereby set aside with a direction that the petitioner's appeal No. 28 of 1997 should be heard on merits by the appellate authority. Rule is made absolute accordingly with no order as to costs.

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